IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 17538-42 of 2006

Dharamvir Singh & Ors. ...Petitioners through
Mr. C.B. Varma with
Mr. Raghuvinder Varma,
Advocates.

Versus

Lt. Governor Delhi & Ors. ...Respondents through
Mr. Arun Birbal, Advocate for
Respondents 1 to 3/Govt.
of NCT of Delhi.
Mr. Gaurav Sarin with
Ms. Jhum Jhum Sarkar, Advs.
for Respondent-4/DDA
Mr. Sanjay Poddar, Advocate
for LAC

Date of Decision : March 20, 2007

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE J.P. SINGH

1. Whether reporters of local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the Judgment should be reported in the Digest? Yes

J U D G M E N T

1. The Petitioners have invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution praying for the issuance of a writ of certiorari or similar writ,

order or direction quashing the Notification dated 8-10-2002 bearing No. F.10/41/2002/L&B/LA11820 under Section 4, and the Declaration of even number dated 30.12.2004 under the Land Acquisition Act, 1894 (hereinafter referred to as `the Act') relating to the Revenue Estate of Village Bakkarwala; and seeking protection against their dispossession from the land and from the demolition of their structures thereon; notably it has also been prayed that this Court should direct the Respondents to de-notify the land.

2. Mr. C.B. Varma, learned counsel appearing on behalf of Petitioners, has contended that without acting upon the previous acquisition, fresh steps have been taken under Sections 4 and 6 of the Act for the purposes of construction/widening of the existing road. It has not been contested, as it cannot be, that construction or widening of a road is a public purpose which is not impervious to any challenge on the grounds that it does not qualify as a public purpose. Mr. Varma has also contended that there was no justification for resorting to Section 17 of the Act in view of the delay on the part of the Respondents to complete the acquisition. The argument is that although the Notification under Section 4 took place on 8.10.2004 the purpose for which

the land was acquired has not till date been fulfilled. This argument has to be summarily rejected forthwith. Keeping in view the spate of litigation and writ petitions filed by owners of the land in the wake of Section 4 Notifications, the Respondents cannot be faulted for the delay. We are not persuaded by Mr.Varma, therefore, to apply *Parveen Gupta -vs- Union of India*, 41 (1990) DLT 166. So far as reliance on *Satyendra Kumar -vs- Union of India*, 1994 (28) DRJ 264 (DB) is concerned we find it misplaced. The acquisition in that case was looked upon unfavourably since it was evident in the facts of that case that the powers had been exercised for extraneous or irrelevant considerations and the Respondents had not come forward to explain the delay on non-payment of compensation.

3. The arguments that have been raised before us are a reiteration of the contentions voiced in W.P. (C) No. 19107 of 2005 titled ***Vishav Jagriti Mission*** vs. Union of India which was dismissed by a Division Bench of this Court in terms of the Judgment dated 7.11.2005. The Notification under Sections 4 and 17(4) as well as the Declaration under Section 6 which were challenged in these proceedings are the very same ones that have been assailed before us. The matter stands covered on all fours

against the Petitioners, and we see no justification in adding to the volume of precedents by articulating our agreement thereto.

4. Faced with this difficulty Mr. Varma drew our attention to orders passed in W.P. (C) 13577-666 of 2006 titled ***Nanak Chand*** vs. Lt. Governor dated 21.2.2006 in which the challenge to the Notification under Section 4 and Declaration under Section 6 of the Act had been dismissed. However, by the consent of learned counsel for the parties, the Petitioners' Representation under Section 48 of the Act was directed by another Division Bench to be disposed of by the Competent Authority within three months. Till a period of two weeks thereafter, the Court had protected the Petitioner's possession as well as structures. Mr. Varma has prayed that similar orders may be passed by us.

5. As has already been noted above, the writ petition bearing No. W.P. (C) 13577-666 of 2006 had been dismissed. Learned counsel for the Respondents have argued that this may have been for the reason that the Petitioner had filed an application under Section 48 of the Act asking for de-notification of the land in question in those Petitions. Their contention is

that as soon as such a prayer is made, it cannot but be assumed that the Petitioner do not have any subsisting challenge to the acquisition proceedings under the Act. In W.P. (C) No. 6384 of 2000 titled *Baijnath Aggarwal Dharmarth Trust Society vs. The Lt. Governor* decided on 22.8.2006 another Division Bench of this Court had noted that during the pendency of that writ petition, "the Petitioner opted to seek de-notification of the land in question by filing an application in terms of S.48 of the Act. .... clearly the petitioner gave up its challenge to the validity of the Notification under challenge." Since this approach had not been contested before the Division Bench as is palpable from the absence of any analysis of all facets of this interesting legal nodus, the conclusion must be restricted to the facts of that case.

6. We have considered the appropriateness of passing orders similar to those passed in ***Nanak Chand.*** However, Mr. Gaurav Sarin and Mr. Arun Birbal, learned counsel appearing on behalf of Respondents, stoutly opposed such orders being reiterated in these proceedings and we find that this is for good reason. In the first place the Petitioners have approached this Court as late as on 22.11.2006 in respect of an assault to Notification dated 8.10.2004 under Section 4 of the Act. For two

years, the Petitioners were sitting on the fence watching the fate of litigation initiated by persons similarly placed to them. Valuable and extremely scarce time of the Court has been taken up in argument on these petitions which fittingly have already been heard and disposed of in ***Vishav Jagriti Mission.*** It is obvious to us that the Petitioners had intentionally withheld their challenge till the judgment was delivered in those matters on 7.11.2006. This ground by itself is a sufficient reason to decline to exercise the extraordinary jurisdiction possessed by us by virtue of Article 226 of the Constitution, and we hold so.

7. Even otherwise it has been pointed out by Mr. Sarin, who also appeared in ***Nanak Chand*** that compared to the public purpose which is intended to be satisfied in the present proceedings there was no pressing or urgent need in that case. Hence in ***Nanak Chand*** the Respondents had not objected to the time bound disposal of Section 48 applications. Mr. Birbal had justifiably underscored the fact that the present Petitioners have approached the Court after an inordinate and unexplained delay of two years. Our attention has been drawn to the observations made by another Division Bench in *Raheja Hospital & Psychiatric Research Institute -vs- Lt. Governor of Delhi*, 121

(2005) DLT 193 (DB). In that case the Bench had observed that the "representation made by a landowner under Section 48 of the Act really cannot say anything more or different from what has already been indicated. .... This being the position, we are of the view that the Act does not give repetitive or unlimited opportunities to a landowner to challenge the acquisition process." To these observations we add that recourse to Section 48 of the Act leads to the passing of an administrative order which, in the absence of violation of principles of natural justice, ought not to be judicially reviewed. Although there is tendency to repeat the grounds of challenge under Sections 4 and 6 in the applications filed under Section 48 of the Act the considerations would be altogether different.

8. In the present case Mr. Varma has belaboured the point that some assurance had been given by the Hon'ble Lt. Governor to the effect that colonies and "built up areas would be identified for regularisation and would also be excluded from the ongoing and fresh acquisition proceedings." This assurance was not given to the Petitioners and hence would not operate as estoppel in their favour. Even otherwise we fail to appreciate how the principles of estoppel would have any role to play since

it has not been pleaded that construction took place or the Petitioners acted to their detriment because of the assurance given by the Lt. Governor. It is incongruent that built-up areas which may subsequently be regularised would be impervious to acquisition, whereas regular and legal colonies would be subject to acquisition for public purposes. If this approach is followed it would militate against the equality rule promised to every citizen within India by Article 14 of the Constitution. If an intelligible differentia is to be carved out between illegally built-up areas which have been regularised for any reason (usually political) and colonies authorised from the inception by appropriate Authority and on which structures have been constructed in accordance with municipal laws, favourable treatment could be justified in the case of the latter class. In the context of the present regularisation drive by the Government we may only observe that the effect would be that demolition of unauthorised constructions would no longer be permissible. It cannot possibly be argued that that newly regularised colonies could not be the subject matter of acquisition for public purposes.

9. The writ petition is wholly without merit. Granting

the indulgence and protection given in ***Nanak Chand*** would only cause further delay attributable to the pendency of judicial proceedings. It is our experience that when all else fails Section 48 is resorted to as a last measure which very often results in a second round of litigation. The consequence is delay in the implementation of public projects.

10. Keeping in view the fact that there has been inordinate delay in approaching this Court and that arguments have been addressed for some time in spite of the decision of this Court in ***Vishav Jagriti Mission*** the writ petitions are dismissed with costs of Rs.5000/-.

(VIKRAMAJIT SEN)
JUDGE

(J.P. SINGH)
JUDGE

March 20, 2007
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